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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

WRIT PETITION NO. 3212 /2004

PETITIONER

Vidyadhar Tiwari, aged about 53 years, son of Late Teerath Raj Tiwari, retired Principal, Government Hr. Secondary, School) Gharghora, resident of Vidya Bhavan Chakradhar Nagar, Banglapara, Raigarh (Chhattisgarh)

P.R. No. 3219/02
Presented by Shri Roshan Dubey
dated 13-9-02

VERSUS

RESPONDENTS

1. The State of Chhattisgarh, through : the Secretary, Department of Tribal Welfare, Dau Kalyan Singh Bhawan, Raipur (C.G.)

2. The Commissioner, Tribal Welfare, D.K.S. Bhawan, Raipur (Chhattisgarh)

3. The Joint Director, Accounts Treasury and Pension, Bilaspur (Chhattisgarh)

4. The Assistant Director, Tribal Development, Raigarh (C.G.)

WRIT-PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT OR WRITS, ORDER OR ORDERS, DIRECTION OR DIRECTIONS UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE.

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AFR (SC)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

WRIT PETITION NO. 3212 of 2004

Vidyadhar Tiwari

Versus

The State of Chhattisgarh & others

POST FOR ORDERS ON 18th NOVEMBER, 2005

Sd/-
Satish K. Agnihotri
Judge
17-11-2005

(51)

HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench:- Hon'ble Shri Satish K. Agnihotri, J.

Writ Petition No. 3212 of 2004

Vidyadhar Tiwari

Vs

The State of Chhattisgarh & others

Present :- Mr. Santosh Kumar Tiwari, learned counsel for the petitioner.

Mr. Pankaj Shrivastava, learned Panel Lawyer, for the State/ respondents.

ORDER

(___/11/2005)

The present petition filed under Article 226 of the Constitution of India impugns the orders dated 13.03.2003 and 28.02.2003 (Annexure-P/1 filed collectively) whereby a sum of Rs.98,917/- has been directed to be deducted from the retiral dues of the petitioner.

2. Undisputed facts, in the present case, are that the petitioner was appointed as Assistant Teacher in the Department of Tribal Development on 30.07.1961. Subsequently, he was promoted to the post of Lecturer and thereafter to the post of Principal. On 31.05.2002, the petitioner while working as Principal retired on attaining the age of superannuation from the Government Higher Secondary School, Gharghora, District Raigarh. The petitioner received communications dated 13.03.2003 and 28.02.2003 (Annexure-P/1 collectively) whereby it was directed that a sum of Rs.98,917/- be deducted from the pensionary benefits settled to the tune of Rs.2,96,670/-.

3. The petitioner has filed this petition praying that the impugned orders (Annexure -P/1 collectively) deducting a sum of Rs.98,917/- from the pensionary benefits of the petitioner are illegal, arbitrary and unreasonable.

4. The respondents in their return submitted that the petitioner was paid excess amount w.e.f. 30.01.1986 by mistake, as such the impugned orders for deduction of Rs.98,917/- paid as excess amount was just and legal.

5. Mr. Santosh Kumar Tiwari, learned counsel appearing for the petitioner submitted that the petitioner had not overdrawn any excess amount and whatever amount as paid by the respondents, the petitioner had accepted it as his salary right from 30.01.1986 till the date of his retirement i.e. 31.05.2002. Learned counsel further submitted that if there was any excess amount that was not made on account of the fault committed by the petitioner, as such the respondents were not entitled to recover the same. It was next submitted in the rejoinder that the petitioner was promoted as Lecturer w.e.f. 26.09.1966 on the pay-scale of Rs.250-450/- and the same was revised later on as Rs.350-600/- w.e.f.01.01.1972 and thereafter again revised as Rs.925 - 1500/-. The petitioner was promoted as Principal on 30.01.1986 in the pay-scale of Rs.1000 - 1920/-. Learned counsel further submitted that the calculation of the respondents to the effect that the petitioner ought to have been paid Rs.3,675/- per month as Principal was not correct.

6. As per the Madhya Pradesh Revision of Pay Rules, 1987, which were made effective from 01.01.1986, the pay-scale of the petitioner as Lecturer was fixed at the scale of Rs.1540 - 2740/-. Thereafter, as per the Madhya Pradesh Revision of Pay Rules, 1990, the pay-scale of the petitioner as Lecturer was fixed at Rs.1640 - 2900/-. The pay-scale of the petitioner as Principal was fixed at Rs.1820 - 3300/- and thereafter immediately it was re-fixed at the scale of

Rs.2375 - 4175/-. As per the Madhya Pradesh Revision of Pay Rules, 1998, the petitioner's pay-scale was fixed at Rs.8000 - 13,500/-. All the above stated fixations were recorded in the service book of the petitioner. Learned counsel for the petitioner submitted that since the petitioner's pay-scale was fixed by the respondents and the petitioner had been paid the pay fixation for about 16 years i.e. till he retired on 31.05.2002, the action of the respondents for recovering a sum of Rs.98,917/- from the pensionary benefits of the petitioner was illegal, unreasonable and discriminatory.

7. Mr. Pankaj Shrivastava, learned counsel appearing for the respondents, on the contrary, submitted that it was admitted that the pay-scale was fixed by the respondents and relevant entries as stated by the petitioner had also been made in the service book of the petitioner. Learned counsel submitted that the payment made on the basis of fixation of pay-scale was excessive and it was done inadvertently. Learned counsel further submitted that the petitioner should not get advantage of excess payment made inadvertently by the respondents.

8. Having heard the rival contentions of both the parties wherein all the facts are admitted except that the payment made was excessive and the same was done inadvertently by the officers. The petitioner cannot be faulted for the excess payment, if any. On perusal of several documents i.e. Madhya Pradesh Revision of Pay Rules, 1987, Madhya Pradesh Revision of Pay Rules, 1990, Madhya Pradesh Revision of Pay Rules, 1998 and thereafter the entries made in the service book of the petitioner, it is clear that no excess payment has been made. The respondents had not submitted any calculations in support of their contention that the excess payment was made.

9. The Supreme Court in the case of **Shyam Babu Verma and others Vs. Union of India & others - (1994) 2 S.C.C. 521**, has held that the employees who

have received higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them. In that case, the petitioners were given higher pay-scale w.e.f. 01.01.1973, although only after a period of 10 years they became entitled to the higher pay-scale, but as they received higher scale since 1973, and the scale was reduced in the year 1984 w.e.f. 01.01.1973.

10. Again, the Supreme Court in the case of **Sahib Ram Vs. State of Haryana and others - (1995) Supp. (1) SCC 18,** held in para 5 as under :

> " 5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant."

11. In another case, the Supreme Court in the case of **V. Gangaram Vs. Regional Joint Director and others - (1997) 6 S.C.C. 139,** wherein the question of payment of increments on the basis of two qualifications namely M.A. and M.Ed. was involved and the petitioner was granted 4 increments for acquiring M.A. and M.Ed. qualifications, however, the petitioner was entitled to 2 increments for acquiring the said qualifications. The Supreme Court was of the view that excess amount was liable to be recovered. In the above stated case, earlier decisions in the cases of **Shyam Babu Verma (Supra) and Sahib Ram (Supra)** were not referred to.

12. In the present case, the respondents have not established as to how the excess payment was made to the petitioner from 30.01.1986 till the retirement of the petitioner, rather the petitioner had proved on the basis of various pay revision rules i.e. Madhya Pradesh Revision of Pay Rules, 1987, Madhya Pradesh Revision of Pay Rules, 1990, Madhya Pradesh Revision of Pay Rules, 1998 that no excess payment was made to him. Even otherwise, for the excess payment, if any, made to the petitioner, he was not at fault and the amount received by him might have been used by adjusting himself accordingly treating the same as his salary. At this stage, directing recovery of the alleged excess amount from the pensionary benefits of the petitioner will not be just and proper.

13. In view of the above stated facts and the decisions of the Supreme Court, the petition is allowed and the impugned orders dated 13.03.2003 and 28.02.2003 (Annexure-P/1 filed collectively) directing recovery of the amount allegedly paid to the petitioner in excess, are hereby quashed. The petitioner is entitled to full pensionary benefits without any deduction. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge
18-11-2005.